

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENNIS BURTON UNDERWOOD,

Plaintiff,

v.

TAYLOR APPELO, *et al.*,

Defendants.

Case No. 2:17-cv-01676-JR

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Jolie A. Russo issued Findings and Recommendation in this case on March 18, 2019. ECF 71. Magistrate Judge Russo recommended Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint (ECF 38) be granted and Plaintiff's Motion to File Third Amended Complaint (ECF 54) be denied.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge's findings and recommendations,

“the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate judge’s recommendations for “clear error on the face of the record.”

Plaintiff moved to file Amended Objections, which the Court granted and has reviewed. ECF 79. Plaintiff argues that his claims are not barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). The Court has reviewed *de novo* those portions of Magistrate Judge Russo’s Findings and Recommendation to which Plaintiff has objected. The Court agrees with Magistrate Judge Russo’s reasoning and ADOPTS those portions of the Findings and Recommendation.

For those portions of Magistrate Judge Russo’s Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Magistrate Judge Russo's Findings and Recommendation, ECF 71. Defendants' Motion to Dismiss (ECF 38) is GRANTED and Plaintiff's Motion to File Third Amended Complaint (ECF 54) is DENIED.

IT IS SO ORDERED.

DATED this 2nd day of May, 2019.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge